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Combe's fifth and last edition of his *System of Phrenology* contains all that is required for ordinary study of the subject. In the twenty volumes of the *Phrenological Journal* will be found a full discussion of the whole question from its first introduction into this country, with precisely the same objections, and the answers to them, as in the present day.

Coventry, May, 1869.

CHARLES BRAY.

## THE ORIGIN OF THE ENGLISH.—PIKE *v.* NICHOLAS.

A most important trial to British Anthropologists, and to literary men in general, has been recently decided in Vice-Chancellor James's court. The case of Pike *versus* Nicholas had been, for several months previous to the trial, known to be one which produced the greatest interest, and when, on the 27th of April, the cause commenced, a large number of Fellows of the Anthropological Society, and many celebrated literary men, were in court.

Mr. Grove, Q.C. (late President of the British Association for the Advancement of Science), and Mr. Jemmett, were for the plaintiff; Mr. Kay, Q.C., and Mr. Osborne Morgan, M.P., for the defendant.

Mr. Grove, in his opening address, gave an outline of the history of the suit. Mr. Pike, he said, had been an open scholar of Brasenose College, Oxford, and had passed through the usual stages up to the degree of M.A. He had been called to the bar in 1864; but, instead of practising, had devoted himself to literary and scientific pursuits, and especially the study of Anthropology in its various branches. He had, as early as 1858, made some jottings for the philological portion of his work, *The English and their Origin*; he had collected various materials bearing upon the subject, in many of its aspects, before the year 1864.

In the autumn of that year, there appeared an advertisement offering a prize of one hundred guineas for the best Essay upon the *Origin of the English Nation*, in English, Welsh, French, or German. The money was to be paid partly by Mr. Arthur Johnes, and partly by the National Eisteddfod. Mr. Pike, after some correspondence, in which he stated that he had already collected materials for the work, agreed to compete, on condition that, if unsuccessful, his MS. should be returned to him. Eleven essays were sent in on the 1st of March, 1865, and the decision of the judges was made known in the autumn of that year. The judges were Prince Lucien Buonaparte, Mr. Arthur Johnes, and the Rev. Basil (now Archdeacon) Jones. The last mentioned gentleman expressed high approbation of Mr. Pike's work as "a remarkable production;" hoped that it would be published, and would receive the prize, and declared that no other essay was worthy of consideration, or possessed any originality. Mr. Arthur Johnes also declared Mr. Pike's essay to be the best; and though he differed from its conclusions, thought that it

would be for the benefit of science that it should be published. Prince Lucien Buonaparte, without giving any opinion on the relative merits of the competing essays, declined to enter into arguments which were not philological, and [Mr. Pike having spoken somewhat slightly of Philological Ethnology] recommended that the prize should not be awarded. In the official report of the Eisteddfod, it was announced that Mr. Pike's claims were not set aside, but only deferred, and that the prize was offered again for the following year. Mr. Pike, however, did not see fit to accept this invitation, or to change his matured opinions in accordance with the opinions of those who differed from him. He spent some months in revising and correcting his work, and published it in May, 1866.

Dr. Nicholas was a competitor, under the name of "Multis Unus", in 1865 (when both Mr. Basil Jones and Mr. Arthur Johnes pronounced his work to be the second best), and again in 1866. It appears that in the latter year, the essays were not sent in until the 2nd of July, some time after the publication of Mr. Pike's book. Dr. Nicholas's *nom de plume* was, on this occasion, A. B. C. Z., and the judge was Lord Strangford. The latter, in his adjudication, referred to the appearance of Mr. Pike's book, and assigned that as a reason for again withholding the prize. The plan, arrangement, and some of the matter of A. B. C. Z.'s essay he mentioned in laudatory terms; but added significantly, that it was "typically second hand," and that the world would lose little, if it never saw the light.

In July, 1867, Mr. Pike received a letter from Mr. C. Carter Blake, enclosing a prospectus issued by Dr. Nicholas, and calling his serious attention to the extraordinary similarity between the language and arguments in it and in Mr. Pike's book. The book, for which subscriptions were asked in this prospectus, was published in the beginning of 1868, under the title of *The Pedigree of the English People*. The plaintiff first became aware of its publication when he was requested to review it for the *Anthropological Review* in March, 1868,—both Mr. Pike's and Dr. Nicholas's book, it should be observed, were published by the firm of Longmans,—and after some correspondence and an interview with Mr. Wm. Longman, consulted his solicitors. They advised him to file a bill, and obtain an order for the production of Dr. Nicholas's MSS. of 1865 and 1866, as well as of the MS. from which Dr. Nicholas's book was printed. This was accordingly done; and the plaintiff's case rested, therefore, not simply on the two books, but also upon the indicia of the MSS.

The plaintiff's charge was that nearly the whole of the argument contained in the third portion of the defendant's book, was copied from, and a piracy of, the plaintiff's book; and that the defendant had made an unfair and illegitimate use of the plaintiff's book, so that the book of the defendant did not constitute, as it professed to do, an original work.

Mr. Grove then proceeded to comment upon the identity in plan of the two books. The two plans were set out in the plaintiff's bill in the following manner:—

*Plan of the Plaintiff's book.*

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#### CHAPTER I.

The Historical Evidence.

*Plan of the Defendant Thomas  
Nicholas's book in Part III.*

#### CHAPTER I.

The Historical Argument.

CHAPTER II. The Philological Evidence.	{.....}	CHAPTER II. The Evidence of Philology.
		CHAPTER III. Same subject continued.
		CHAPTER IV. Development of Early English Law.
CHAPTER III. The Evidence of Physical Characteristics.	{.....}	CHAPTER V. Sec. 1. Evidence of Physical Characteristics.
CHAPTER IV. The Evidence of Psychological Characteristics.		Sec. 2. Evidence of Mental and Moral Characteristics.

Mr. KAY here interrupted with a remark, that he should have something to say about the manner in which those parallel plans had been drawn out; but for the present he would only observe that the words "Mental" and "Moral" were different from the word "Psychical", which the defendant had not used.

Mr. GROVE said his learned friend might possibly discover, before the case was concluded, that the defendant had used that word "Psychical"; but for the present he would content himself with calling attention to some of the most striking instances of verbal similarity, though these of course did not constitute the substance of what he relied on. He would begin with the criticism of Gildas in the two books, and in the defendant's prospectus.

We give these passages in parallel columns:—

Plaintiff's book, p. 21.	Defendant's Prospectus.
"Gildas is the only authority an Englishman can appeal to. Who, then, was Gildas?"	"Gildas is the great original authority.
	"But who was Gildas?"

The latter sentence also appears at p. 20.

Plaintiff, p. 16.	Defendant, p. 245-6.
"A necessary part of a child's education."	"This belief, instilled to this day alike into the child's mind in the nursery, and the student's mind in the lecture-room."
"A Cambridge Professor of History does not scruple to dilate upon the merits of our Teutonic race."	

Pike, p. 23.

"Allowing, then, that Gildas, no matter who he may have been, lived in the sixth century, we come to our third and most important question, How far may we trust him?"

Nicholas, p. 252 and 250.

"But allowing that Gildas was an authentic person, the author of the *Excidium Britannie*, how far is his book an adequate authority for the belief founded upon its representation?" P. 252.

Plaintiff, p. 25.

"It is impossible to glance either at 'the history' or at the 'epistle' without coming to the conclusion

Defendant, p. 258.

"It is utterly impossible to receive his statements as anything else than the splenetic exaggerations of an ill-

that the author's mind was in an un- informed and prejudiced monk.  
healthy condition.

Mr. GROVE, after reading these passages, said there was not only identity of words, such as he had pointed out, but identity of argument, identity of quotations, identity of purpose, for which the criticism was used; and the same phenomenon ran through the whole of the passages, of which complaint was made, in the defendant's book. There was a series of curious coincidences which it was impossible to explain according to the law of probabilities, except on the hypothesis that one book had been copied from the other. The whole of the passages upon hair-colour, and skull-form, had been taken, he submitted, by the defendant from the plaintiff, and he would give some curious instances of verbal agreement in illustration.

Pike.

"And now let us ask, Are the English a fair-haired people? Can it be said that 90 per cent. of them are fair-haired? Most certainly not." P. 132.

"The second hypothesis is, that a preponderance of Cymric blood in the invaders, who came from the Cimbric Chersonese and its neighbourhood, may have caused, wholly or in part, that resemblance which is to be traced between the ancient Britons and the modern English." P. 243.

"To Greek and Roman eyes, the Germans did certainly appear, in general terms, to be all light-haired. There is no evidence whatever on the opposite side. But if we suppose the Greeks and Romans to have been generally dark-haired, and to have regarded fair hair as a rare and very great beauty, they would necessarily have been very much struck by a proportion of light hair among the Germans, greatly in excess of that which they found among themselves." P. 138.

"As in the case of the Germans, so in the case of the Celts; we must believe no more than that the eyes of the Romans and Greeks were struck by the greater proportion of fair hair among the Celts than among their own people. But there is reason to believe that they were less struck

Nicholas.

"But now comes the question, Do the English people, who are said to have descended from those ancient Germans, display these same characteristics of race? Are they prevalingly blue-eyed and red or yellow-haired?" Nothing of the sort. P. 506.

"We do not question but that this junction may, to some extent, have taken place in the Cimbric Chersonese; probability lies strong in favour of such a supposition." P. 522.

"Let us premise that it is more than probable that the Greeks and Romans, to whose writers we are indebted for certain minute descriptions of the personal characteristics of the ancient Teutons and Celts, were themselves of a prevalingly *dark* complexion. Hence it is that, according to the usual rule of setting a high value on that which is rare, they took especial notice of the light or 'yellow' hair of the Germans, and of the less light hair of the Gauls and Britons, as a feature of comeliness." P. 502.

with this phenomenon among the Celts than among the Germans." P. 147.

"That dingy hue, neither light nor dark, which is very common among Germans." P. 139.

From p. 158 to p. 178 Mr. Pike discusses skull-forms.

From p. 172 to p. 176, Mr. Pike considers the Greek head-form, because it illustrates some of his previous and subsequent arguments.

"It is a dingy tan, produced nowhere but under the German sky." P. 505.

Dr. Nicholas gives an abstract (without acknowledgment, of course) of Mr. Pike's argument. He further goes out of his way to remark that Greek heads are of the same class of form as the Celtic, though the form of the Greek head has no bearing upon his final conclusions. P. 519.

Mr. GROVE went on to remark that, in addition to the piracy of whole sections of the book, the defendant had filched a number of arguments and illustrations, which he had scattered about in various portions of his printed work. He dwelt especially upon an instance of this in the preface, where each author quite unnecessarily goes into a discussion, and takes exactly the same view of the question of classical orthography. Of still greater importance, however, was the fact that Dr. Nicholas had copied Mr. Pike's blunders.

The following parallel passages were important in many ways:—

Pike.

"Livy, too, describes the Gauls as having *rutilatæ comæ* (reddened hair, or hair made light), not *rutilæ comæ* (red or light hair)." P. 148.

Nicholas.

"Livy writes that they [the Gauls] had not *rutilæ comæ* (red hair, but *rutilatæ comæ* (reddened hair)" p. 514, and again, p. 515.

In this last passage, both plaintiff and defendant appeared to have fallen into a very remarkable error. Both gave Livy as their authority; but Dr. Nicholas had omitted to mention Livy in his list of authorities. The passage in question was a speech of Cn. Manlius, intended to encourage Roman soldiers who were about to engage the Galatians. "The Galli," he says, "have the most warlike reputation of all the Asiatics. They may have the *rutilatæ comæ*." But, he goes on to explain that wherever a colony has settled under similar circumstances, it has been absorbed by the native population. "These men," he says, "are no exception; they are a mixed breed and degenerate; they were but Phrygians with the arms of Gauls." They did not, therefore, prove the point which both Nicholas and Pike were attempting to prove.

There was an excellent instance of copied blunder, and of blunder aggravated by copying, in Nicholas's list of works consulted (p. 9); he had "Blumenbach (J. Fried.) *Decades Craniorum*, Göttingen, 1828." (Mr. Pike had in his list of works consulted (p. xv), "Blumenbach (Johann Friedrich) *vi Decades et Nova Pentas Craniorum*, Göttingen, 4to, 1828.

There were no *Decades Craniorum* published by Blumenbach in 1828. In order to divert suspicion, Dr. Nicholas had omitted the *Nova Pentas* from his list, and this, strangely enough, was the only portion of Blumenbach's collection published in 1828. The *Decades*, to which alone Dr. Nicholas refers, were published at intervals ranging between 1790 and 1820. Mr. Pike, in giving the date of the whole collection (including the *Nova Pentas*), ought

to have written 1790-1828. Dr. Nicholas (excluding the *Nova Pentas*) ought to have given the date as 1790-1820. He was content to copy Mr. Pike, and went entirely wrong. Even in writing the author's name, Dr. Nicholas had copied an inaccuracy of Mr. Pike's. The work is in Latin; the titlepages of each decade are also in Latin, and the author's name appears thus,—“Jo. Frid. Blumenbach.” Mr. Pike gave the name in German,—“Johann Friedrich”,—not according to the titlepage. Dr. Nicholas likewise introduced the letter *e* into the second name, after the German fashion, and wrote it “J. Fried.”

There was another instance of a blunder of the Plaintiff copied by Dr. Nicholas at p. 498. He referred vaguely to “Our Population Abstracts”, published by direction of government; while Mr. Pike referred to “The Population Abstract” published in 1843 (Census 1841).

Mr. Pike, though he neglected to ascertain the results of the census taken in 1851, and of that taken in 1861, nevertheless carefully expressed himself in the past tense [“were born”]. Dr. Nicholas, however, in the hope of concealing his plagiarism, had changed the tense [“are born”]; and thus, by referring to “Population Abstracts” in general, implied that he had consulted those of more recent date. Now, had he looked at the return of the Census taken in 1861,—which is easily accessible, far more easily than that of the Census taken in 1841,—he would have been under no necessity to take the counties of Surrey and Middlesex, but would have found a table (to which reference is made in the Contents) giving the percentage of those persons inhabiting London who were born in London itself.

Mr. GROVE then commented on the case as a whole. He said it was a case of cumulative circumstantial evidence,—a case in which all the circumstances fitted into one theory, and could not be made to fit into any other. There was exactly the same plan, exactly the same line of argument, exactly the same illustrations, and, in many cases, an exact agreement in verbal expression. The chances against these coincidences having occurred, independently of any plagiarism, were so great that they might be held to amount to absolute certainty. It only remained for him to call witnesses in support of what he had alleged.

Mr. LUKE OWEN PIKE, the Plaintiff, a Vice-President of the Anthropological Society, was the first witness, and was examined by Mr. Jemmett. He confirmed the statements made in Mr. Grove's opening address, and gave a history of the manner in which he wrote his book, and in which he arrived at his conclusions. He had traced back all the assertions concerning the destruction of the ancient Britons to Gildas; had formed the conclusion that Gildas was not a contemporary author, and was, for various other reasons, untrustworthy, and he had quoted Mr. Hardy for some of the facts upon which his conclusion was based. Having but little faith in philology as an index to race, he had fallen back upon physical and psychical characteristics. He had devoted much labour, time, and expense in collecting evidence for his argument from physical characteristics, which, whatever might be its value, he believed to be original. He had paid special attention to the colour of the hair and the form of the skull. He had, from his own observation, compiled a table of hair-colours by a peculiar method of his own. The table appeared at p. 134 of his book. The defendant had given a similar table, very closely agreeing with his, at p. 507 of the defendant's book. He was decidedly of opinion that the defendant could not have observed the numbers given by him in the manner stated by him, and he certainly could

not have done so himself. He believed his argument concerning the hair-colour of the English, considered in relation with the hair-colour of the ancient and modern Teutons, and of the ancient and modern Celts, to be original. He believed his argument concerning the skull-form of the English, in relation with the skull-forms of the ancient and modern Teutons, and of the ancient and modern Celts, to be original. He had arrived at it by a long process of sifting evidence, which was very contradictory. He had not only read a number of works on the subject, but he had made independent observations and measurements of his own, especially at Netley Hospital. [His instruments were produced in court.] He obtained considerable information from various hatters. Except where he had made acknowledgment, all the statements in his book were the result of his own observations or inference.

Mr. PIKE then went on to give evidence concerning the state of the Defendant's MSS. when first produced, in obedience to the summons, and the alterations subsequently made in them. In the MS. essay of 1865 he said, there were missing at that time pages 5-8, 71-166, and 309-322, which had recently been produced. In the MS. of 1866, from which the Defendant printed, the passage concerning Gildas was missing when the book was first produced; and it appeared that the MS. had since that time been taken to pieces and rebound. The passage in question, as recently introduced, was paged in a different way from the rest of the book, the numbers of the pages not running in regular order. The corresponding catch-words, "Gildas examined," in the table of contents were interlined. In the essay of 1865, so far from Gildas being criticised as the original authority, there was a statement that "Gildas copied Bede," Gildas having in fact lived a century and a half before Bede. [The Defendant's MS. and his rough draft containing the same statement, were handed up to the Vice-Chancellor.]

Cross-examined by Mr. KAY. Mr. PIKE repeated that he had prepared materials for his work before the appearance of the advertisement issued by the Eisteddfod, and in particular that he had made notes upon Celtic philology as early as 1858 and 1859. He had copied them into his note-book produced; and other rough notes bearing upon the subject, and made at various times, had been pasted into the same note-book at the time of the appearance of the advertisement. In addition to the copy of the Defendant's prospectus sent to him by Mr. Blake, he had received one from Dr. Nicholas himself, but only after an interval of several days, and after he had spoken to a great number of persons on the subject. He repeated his statement concerning the way in which he arrived at his opinion concerning Gildas; he had looked into all the histories of England in his own possession, and all which he could find at the Museum, and traced back the statements concerning the extinction of Britons to Gildas; he always found either that Gildas was mentioned by name, or that Gildas's statements were adopted. The names of all these histories were not given in his list of authorities simply because the principle on which he had compiled that list was to give the books in which he had found information, and not those in which he had failed to discover any. He had acted on the same principle throughout.

Mr. KAY then asked a number of questions, of which the object was to show that all writers on anthropological subjects treat the subject in the same way. Mr. PIKE's replies were to the effect that there are several different schools of anthropology, some of which put aside physical characteristics altogether; and that even those which accept the evidence of physical character-



istics differ in their estimate of the value of hair-colour and skull-form. Prichard, for instance, had an opinion entirely different from his own of the value of such indications.

Mr. KAY wished to know which of the books in Mr. Pike's list had been consulted for the purpose of discovering the evidence of physical characteristics. To this Mr. PIKE replied, that he was quite willing to go through the whole list, and describe precisely what use he made of each work in it, but he objected to giving a selection merely from memory. This offer, which was repeated, Mr. Kay did not accept. Asked whether he had not found the idea of getting information from hatters in Professor Wilson's paper, published in the *Anthropological Review*, he pointed out that the paper in question appeared in 1865, while the letters from the hatters, produced in Court, bore the date 1864. After seeing Professor Wilson's paper, he added a note to what he had previously written, and mentioned this agreement in method, with Professor Wilson's name, and the note appeared in his book as printed. Mr. Pike was then cross-examined at great length concerning the absence of the criticism of Gildas from the 1866 MS. of the Defendant. He persisted in his former statement that it was missing when he first saw the MS., and that it had since been bound in. He produced a note to the effect that the passage concerning Gildas was wanting, and he was very positive in stating that this note was made at the time of the first inspection.

Re-examined by Mr. GROVE. Mr. PIKE again repeated all that he had said concerning the pages missing, both from the MS. of 1865 (about which there was no dispute) and from the MS. of 1866. Mr. Grove read the letters from the hatters to Mr. Pike, which contained some very curious information, and were admitted as evidence of the labour bestowed by Mr. Pike upon that branch of his subject. He elicited that no notice had been given to Mr. Pike, or his solicitors, of the restoration of any of the missing pages.

Examined by the VICE-CHANCELLOR. Mr. PIKE said he was acquainted with French, German, the classical languages, and, to some extent, with Welsh. He had consulted the Myvyrian Archaeology of Wales in Welsh.

The next witness was Mr. RICHARD STEPHENS TAYLOR, Junior, one of the Plaintiff's solicitors. He corroborated all that Mr. Pike had said concerning the absence of the section on Gildas from the Defendant's MS. of 1866, and concerning the absence of a number of pages from the MS. of 1865 at the time of the first inspection. He added that when he applied for a second inspection he was told, by Dr. Nicholas's solicitors, that the MS. had been sent back to the Defendant for him to prepare his brief.

This concluded the first day's evidence (April 27th).

On the second day the first witness called was Dr. JOHN BEDDOE. Examined by Mr. GROVE, he said he was President of the Anthropological Society of London, and a corresponding member of many foreign learned societies. He had for many years given his attention to anthropological science. He had read Mr. Pike's book, and considered the criticism of Gildas in it to be original. He had examined the tables of hair-colour in Mr. Pike's book and compared them with those in Dr. Nicholas's; he had found so very close a resemblance between the tables in the two books, in their proportions, that he did not think they could have been drawn up by two independent observers. Different observers differed extremely in their ideas about colour; he had proved that by setting different people to work on the subject. He did not believe that Dr. Nicholas, who was a very short man, could have collected eleven thousand instances in twenty assemblages. There were great

physical difficulties in the way, both by day and by night, both in-doors and out-of doors; he had himself collected as many instances but had been a very long time about it, though he had very keen sight. He had written several papers on the subject of hair-colours, but those which had been quoted by Mr. Pike were precisely those which were quoted by Dr. Nicholas, and those omitted by Mr. Pike were omitted by Dr. Nicholas. Two of these neglected papers were of at least equal importance to the subject with those referred to.

Cross-examined by Mr. KAY. He said that he had formed the opinion that Mr. Pike's criticism of Gildas was original from a considerable amount of reading on the subject, and he had himself written an essay on the Origin of the English. He was aware that Gibbon and others had discredited Gildas, but not for the same purpose nor by the same arguments as Mr. Pike. He considered his own method of tabulating hair-colours statistically was original. Prichard had vaguely recorded some of his impressions, but had given no figures; no one had previously made observations of any value for the purposes of science. It was very difficult to arrive at any result in-doors, owing to the variety of shades in different parts of the room. A man in a pulpit might be better than another, but a man in a pulpit had something else to do besides observing heads of hair; the value of the evidence of hair and skulls in ethnological investigations was a matter of opinion. Writers of the philological school rejected that evidence altogether, but he thought they were wrong.

Re-examined by Mr. GROVE. He said again, he thought Mr. Pike's criticism of Gildas was original, and he thought the Defendant's criticism was substantially the same. He thought the course of argument in Mr. Pike's book, and the deductions from the colour of the hair, the form of the skull, and their relations to the proportion of the British and Saxon people in England were original, and they differed considerably from his own opinions. He found the same course of argument in the Defendant's book.

Examined by the VICE-CHANCELLOR. He said he could take down all the instances of hair-colour which it was possible to take in the court in a very few minutes, but the difficulty of light was so great that there were very few instances which he could take down at all.

Mr. CHARLES CARTER BLAKE, examined by Mr. Jemmett, said he was Lecturer on Comparative Anatomy at Westminster Hospital, and had been Hon. Secretary of the Anthropological Society. He had received a copy of the defendant's prospectus in July, 1867, and immediately called Mr. Pike's attention to it in a letter, enclosing the prospectus itself. He saw the defendant's book on his return from abroad, in July, 1868. He had given attention to the subject of the two books for many years. He had not seen Gildas treated in a manner or with phraseology similar to that of Mr. Pike anywhere except in Dr. Nicholas's book. He had given his attention more especially to the subject of physical characteristics, and had pointed out in a review of Mr. Pike's book in the *Medical Times and Gazette*, that there were many authors whom Mr. Pike might have cited, but had omitted to cite in proof of his conclusions. Those were precisely the works omitted by the defendant in his list of authorities, and there was no reference to them anywhere in the defendant's book. The works referred to by the defendant were precisely the works referred to by the plaintiff. Mr. Pike's argument from the skulls was novel at the time at which it appeared, and not only the train of argument, but the generalisations upon which it was founded con-

cerning the shape of Celtic skulls. The identification of Greek with Celtic skulls was also novel. To all this he had observed a great resemblance in the defendant's book, even to the point of the Greek skulls, and an absolute identity in the phraseology. As regarded the defendant's tabulation of 11,000 hair-colours in twenty assemblages he had tried the experiment; and he believed the thing to be impossible. There was a plate in the defendant's book with representations of four skulls; they gave him the impression that they had been put there by a person unacquainted with the subject; they had been taken from two elementary works; and the four skulls were drawn in three different positions, so that any comparison between them was utterly impossible.

Cross-examined by Mr. OSBORNE MORGAN. He was acquainted generally with Gildas; and the arguments on that subject of the plaintiff appeared to him new; he was not in the habit of reading the *Saturday Review*, nor was he acquainted with Mr. Hardy's works. Both the plaintiff and the defendant discredited Gildas, and they both used a certain phraseology in discrediting him. He believed the fact that the modern English possess long skulls was first established by the plaintiff, and that the plaintiff had first combined the propositions that the Celtic skull was long, that the Teutonic skull was short, that the modern English skull is long, and that, therefore, the English are descendants of the ancient Britons. That was perfectly new.

Re-examined by Mr. GROVE. There were ten different heads in the defendant's book which agreed with ten heads in the plaintiff's book. He found them put in the same way, and bearing on the same subject in the same way; and the phraseology, if not agreeing letter by letter, was substantially similar.

The VICE-CHANCELLOR. "You have been in the habit of writing on the subject?"

Mr. BLAKE. "I have."

The VICE-CHANCELLOR. "You have been in the habit apparently of writing reviews upon works?"

Mr. BLAKE. "I have."

The VICE-CHANCELLOR. "Supposing these two books were put in your hands for the first time, with your experience as a writer and a reviewer, would you come to the conclusion that one was borrowed from the other, or that both were borrowed from a common source? One of these two hypotheses must be true."

Mr. BLAKE. "I should say that one was certainly borrowed from the other."

The VICE-CHANCELLOR. "The other hypothesis is that they might be both borrowed from a common source."

Mr. BLAKE. "That hypothesis would be impossible to my mind."

Mr. JEMMETT then addressed his Honour on behalf of the plaintiff. He said after the opening of his learned leader he would not occupy much of the time of the court. But there were one or two points which would add weight to the great mass of cumulative evidence already brought to bear upon the subject. His Honour had seen how Dr. Nicholas was so ignorant of the first duties of a historical critic in 1865 that he actually supposed Gildas lived after Bede and copied him, while the scope of his criticism, as published, was to show that Bede copied Gildas, and was, therefore, not to be trusted. But Dr. Nicholas had never even made this criticism his own; it was in direct contradiction to other parts of his book where he quoted Gildas, Bede,

and Nennius as trustworthy authorities. Even the quotation from Mr. Hardy, which appeared in both books (and which threw discredit on Gildas because he gave a wrong account of the abandonment of Britain by the Romans), had never been understood, but had been blindly copied by Dr. Nicholas. The mistake of which Gildas was there accused was that he had represented the Romans as finally abandoning Britain in A.D. 383, under Maximus, whereas, in fact, they did not really leave until the year 410, under Honorius. Now, not only had Dr. Nicholas taken the assertion of Gildas as correct, but he had, in a part of his book not copied from Mr. Pike, shown that he supposed Maximus to have been a contemporary of Honorius, and to have left Britain in the year 410, whereas Maximus had, in fact, died in the year 388. There could be no stronger proof that Dr. Nicholas had, in implicit reliance upon Mr. Pike, copied a criticism which he did not in the least understand. Mr. Jemmett then proceeded to read some parallel passages in addition to those already cited by Mr. Grove. He also pointed out that Dr. Nicholas's table of hair-colours for London was simply a multiple of Mr. Pike's percentages. The number used as multiplier was 60. Dr. Nicholas had divided one of Mr. Pike's classes into two, had disregarded the decimals, or rather substituted more convenient fractions, had then multiplied by 60, and by that very compendious process had saved himself a considerable amount of labour at Mr. Pike's expense.

Mr. KAY, in opening the case for the defence, complained at great length of the manner in which the plans of the two books had been drawn out side by side in the bill. He was, however, repeatedly interrupted by the Vice-Chancellor, who said that the bill was correctly drawn, that it gave notice to the defendant of what was alleged against him, and that it was idle to suppose that a Judge's mind could be unfairly influenced by that mode of stating the case. Mr. Kay then complained that no notice had been given to his client of the precise passages which were said to have been pirated, and he was dilating on this point when the Vice-Chancellor again interrupted him, saying,—"If you really mean to say that you have in any way been taken by surprise, the case shall be adjourned."

Mr. KAY referred the matter to Dr. Nicholas, who preferred to go on. He then resumed his argument, which was to the effect that all the passages alleged to have been pirated were, with the exception of the criticism of Gildas, written before the defendant had seen the plaintiff's book, and that Dr. Nicholas would establish this by his oath. He argued, however, that, supposing even Dr. Nicholas had had a number of ideas suggested to him by Pike's book, there was no piracy involved. Copy-right meant the right of producing copies, and there was no copy-right in arguments or ideas. But he would go further than this, and say that an author, not only had the right but was bound by his duty to his readers, to consult all preceding works on the subject on which he was writing. He then proceeded to cite cases with a view of showing that any author might take new heads of argument, and the arguments themselves from another work without any infringement of copy-right. He argued that Mr. Pike must have been mistaken in his assertion that the section on Gildas was missing from the MS. of 1866, and mistaken also in the time at which he made a note to that effect. The absence of the leaves from the MS. of 1865 was admitted, and would be explained by Dr. Nicholas. With respect to the criticism of Gildas itself, he denied that the alleged similarity existed between it and Mr. Pike's criticism. The verbal resemblances relied on by the plaintiff he said were not verbal

resemblances at all, and the passages quoted in common were open to one author as well as another. In the same way, he said, all the other verbal resemblances in the two books, if they could be called resemblances, were the result of chance. [As we have already given some of the passages in parallel columns without Mr. Grove's remarks upon them, it is hardly necessary to give Mr. Kay's remarks upon them. They must speak for themselves.] With respect to the copied mistakes, Mr. Kay said there was no error which two authors might not have fallen into independently. As for the expression, "*rutilatæ comæ* not *rutilæ comæ*," he did not think Dr. Nicholas implied that the whole expression occurred in Livy. It was a very natural distinction for two authors to draw. As for the confusion between the Gauls and their degenerate descendants, it was hardly to be called a mistake, and was, if a mistake at all, one which two independent authors might very naturally fall into. He did not see that any copied error had been made out in the case of the population abstracts. What had been done was just what anybody might do. Nor could he see that any error had been copied in the description of Blumenbach's work. He believed he should be able to show that the whole collection of skulls was known by the name of "Decades," and that Dr. Nicholas had arrived at his description in the course of his reading. He submitted that there was no case for the interference of the court. It was true his learned friend Mr. Grove had mysteriously hinted at something which had not yet been brought forward, but he hoped if any new matter really remained to be introduced, he should have the opportunity of replying to it.

Dr. THOMAS NICHOLAS, examined by Mr. Osborne Morgan, said he was a Doctor of Philosophy of a German University, was a Welshman by birth, and conversant with the Welsh language. He was educated at the Lancashire College, and brought up for the ministry of the English Independents. He had for seven years filled the chair at Carmarthen College, where he was Professor of Mental and Moral Science, of Ecclesiastical History, of the German Language, and of General Literature. As Secretary to the proposed Welsh University, he had been in the habit of addressing public meetings. He said the pages at first missing from the MS. of 1865 had been torn out by him in order that his luggage might be light when he was travelling about, and composing his essay of 1866, which was written principally while he was moving from place to place. The loose pages after being used were put into a box at his house at Carmarthen before the competition of 1866, and the box was never opened until recently, when the pages were discovered in it quite by accident and replaced in the book. The rough-draft book D, which contained the evidence of physical characteristics, and the table about which so much had been said, had been written before the end of 1865. He wrote his second essay with a view to publication, and intended to publish it, whether it obtained the prize or not. He finished it on the 13th June, 1866, but did not send it in until the 2nd of July, the last day appointed. He never heard of Mr. Pike's book until September, 1866, when he saw an advertisement of it in the *Saturday Review*, and he bought a copy of it in the following October. He did not get his MS. back from the Secretary of the Eisteddfod until early in that month, and left it with Professor Max Müller on his way up to London. It was afterwards sent to Dr. Rowland Williams and Dr. Davidson. No alterations or additions were made in it before it was sent to those gentlemen. He did not get it back from them until July, 1867, when he sent it to the Rev. Enoch Mcllor, who kept it a month longer.

He published his book in March, 1868. He then went through the whole of the MS. from which his book was printed, stating what were the additions since it was sent in to the Eisteddfod. These were not important in the case except in the one instance of the criticism of Gildas, which Dr. Nicholas said he had substituted for a long note. But this section on Gildas was in the MS. book when first produced in obedience to the summons. No alteration had been made in the book or in the binding since that time. He sent a copy of his prospectus to Mr. Pike among the first, and a note of which he had not preserved a copy. He had made no alterations in the leaves of the 1865 MS. which had been torn out.

At this point the court rose.

The hearing was resumed on the 30th April, when

Dr. NICHOLAS proceeded to say that he had taken the title of the "*Decades Craniorum*" from Gliddon's *Types of Mankind*. In dealing with Gildas he referred to no book particularly except Hardy's *Monumenta* and Gildas' own works. He first saw the passage quoted by him from Stevenson in Hardy. He did not take a single word about Gildas from the plaintiff's book.

[At this juncture a copy of Bohn's translation of Gildas was handed to Mr. Jemmett by Mr. Pike.]

Dr. NICHOLAS then said, "Will you allow me to make a remark: I found the passage from Stevenson in the preface to Gildas's works in Bohn's edition. I afterwards referred to Stevenson's own volume, and found it out."

He had made the note about population abstracts from his own reference to the Census Returns of 1861.

With respect to the table of hair-colours, he said, he compiled it by counting heads in public assemblies. He first saw the passage from Livy which contains the words "*rutilatæ comæ*" in Prichard; Retzius was his great authority on the question of skulls. The idea of comparing the Greek with the Celtic skull was suggested to him by Lyell. Upon being asked again, he said it was suggested to him by Prichard.

Cross-examined by Mr. GROVE. Dr. NICHOLAS said, that he could not recollect to what places he went when he tore the leaves out of his MS. book, except that he was at Carmarthen. He had written a very large portion of his book while on his travels to places of which he could not recollect the names; he was chiefly at Carmarthen. He could not recollect the names of places where he wrote portions of his work, and none of the passages recalled to mind the places where they were written. He could not recollect where he was before he went to Carmarthen. He could not tell, even approximately, the time when he tore the leaves out, nor where he went with them, nor where he used them. He had a house at Carmarthen.

[The MS. of 1866, from which he printed, was handed to him, and he was requested to look at the Table of Contents of Chapter V, and say when the alterations in it were made.] He said they were made, as far as he could recollect, before the Essay was sent in. The word erased under the words "Mental and Moral" was "Psychological." He did not know that it had been partly erased with a knife. He could not make out that the head of the P and the tail of the y had alone been erased with the knife, or some such instrument; it might be so, but he could not make it out. He was quite certain the word erased was not "Psychical," because he had an objection to it and never used it. Whatever the word was he could not say why it was so much more elaborately erased than any other word in that or the adjoining pages. He could not tell why there were certain considerable alterations

made in the rough draft of his table of hair-colours, nor where he was when he wrote those tables. When he made the calculations at the twenty assemblages mentioned by him, he did not put the numbers down at the time but put the numbers down on slips of paper, and used them afterwards. He had not got any of these slips of paper. He had not mentioned any of those matters in his diary. At each assembly he put down the numbers present and the numbers of each colour as a total, but did not jot down each individual. He could not say when he first consulted Hardy's *Monumenta*, nor when he first consulted Retzius. He had a copy of Retzius in Court. He could not say exactly when he got it. He had not had it long, but would be very glad to say how long if he could. He believed he had got it this year; though he was now in the month of April he could not say whether he got it in January, February, or March. He got it from Germany, through Nutt in the Strand. He could not say what copy he consulted before he got his own; it was rather a common book. It could be purchased in this country. Mr. Nutt had not one in his stock. He did not know that he had applied to any other bookseller. He was not sure where he consulted the copy of Retzius to which he had referred in his book, very possibly at the British Museum, but he could not say. He could not give a reference to a single copy of Retzius in the British Museum, or any other place or library, except that which he purchased this year. He had consulted an original copy of Retzius somewhere.

MR. GROVE. "Will you swear that?"

THE VICE-CHANCELLOR. "I do not like that form of question."

MR. GROVE. "I do not doubt it is objectionable."

DR. NICHOLAS continued by saying, he could not state that he took those particular items from Retzius, though he had consulted the work. He had no doubt he had sought for Retzius at the British Museum.

The copy of Pouchet, mentioned in his list of authorities, he had had himself, but could not say when he got it, even approximately. He thought he first consulted it in the Anthropological Society's Library. He was not quite sure whether he took it away with him, but had consulted it at the British Museum a long time ago. Of that he was quite sure, but he could not say for certain that he had seen it at the Anthropological Society's Library. Asked more precisely about the French Edition of Pouchet published in 1864, which was the edition mentioned in his list of authorities, he said he fancied he saw it at the British Museum. He was not sure about it. The edition of Pouchet in his own possession was the translation published by the Anthropological Society. He had not got the French edition of 1864. He believed he had seen it somewhere, but could not say where.

The only passage of Livy quoted by Prichard, containing the words "*rutilatæ comæ*," was in vol. iii, pages 195-6; that described the Galatians, and Prichard accepted it as evidence that they were naturally of xanthous complexion. He had not meant to say that either he or Mr. Pike took their theories from Prichard, only that the passage was quoted there.

He had not had many books from the Anthropological Society's library. He had had the *Anthropological Review*. He had not, to the best of his recollection, had any books from the library except the *Anthropological Review*. He was not quite sure that he had ever consulted a book in the library. He had been in the library and looked at the books, but could not say that he had spent any time in consulting them.

MR. GROVE. "You cannot tell me that you ever consulted a book."

DR. NICHOLAS. "I think the library, on the whole, is a very defective one."

The VICE-CHANCELLOR. "Do not make observations; confine yourself to evidence."

Dr. NICHOLAS in continuation stated, that he could not say when or where or from what copy of Gliddon he took the description of Blumenbach's "Decades." In the passages quoted from Gildas he had taken the translation of Bohn. He had done so because he felt diffident of translating the Latin himself.

Re-examined by Mr. KAY. Dr. NICHOLAS said that the word "Psychical," or "Psychological," or whatever it was, that had been erased, was not copied from Mr. Pike's book. The erasure had been made before the Essay was sent in for competition. A note made by Dr. Rowland Williams in pencil on the page about "*rutilata comæ*," had been made when the MS. was sent to him after the Eisteddfod of 1866.

Dr. ROWLAND WILLIAMS examined by Mr. KAY, said he was a Doctor of Divinity of the University of Cambridge, and vicar of Broadechalke. He had directed his attention to early English history, and had read a paper before the British Association on the Silurian types. He was very slightly acquainted with Dr. Nicholas. Dr. Nicholas's MS. was sent to him late in 1866. He had made no note of the date, but had been told it was in September or October. It was in his possession a few weeks when he returned it to Dr. Nicholas, but he could not give the exact date at which he returned it. He gave it a fair amount of perusal. He wrote the note in pencil while the MS. was in his possession. He believed the MS. to be substantially the same as when he saw it, but the part about Gildas had been added. He thought there had been a note about Gildas before, but could not swear to it positively. Mr. Pike had not spoken of Gildas as being a "monk," and Dr. Nicholas had. He had not only an impression that Dr. Nicholas had not taken his criticism from Mr. Pike, but he spoke positively on the point. He had not instituted a critical comparison between the two books, but had formed an estimate of them. He would like distinctly to state that as regarded the bulk and body of Dr. Nicholas's volume, and he thought a perusal of the two books would show—

Mr. GROVE objected. He said he could have produced plenty of evidence of this kind on his side.

The VICE-CHANCELLOR. "It may arise out of a question which I think I ought not to have asked. I did ask Mr. Carter Blake a question which probably I ought not to have asked, as to what his judgment would have been as a person accustomed to reviewing."

Cross-examined by Mr. GROVE. Dr. Williams said he could not swear to the month in which he saw Dr. Nicholas's MS. Mr. Pike had spoken of Gildas as exercising some ecclesiastical function, but that was not the same thing as being a monk. Gildas was generally considered to be a monk. He was a monk if he was the same person as Aneurin. There was much dispute about him.

Rev. Dr. DAVIDSON, examined by Mr. MORGAN, said he was a Doctor of Law and Divinity. He had no great knowledge of the subject matter of the two books. Dr. Nicholas's MS. was sent to him in January, 1867, and he kept it three months. It was substantially the same MS. as that which was produced in Court. There was a note in it about Gildas, but of what length he did not know. Hardy was quoted in it. He had not read the section on Gildas in the printed book.

Cross-examined by Mr. GROVE. He was intimately acquainted with Dr. Nicholas, who had written on his behalf on a controversial matter.



Mr. SAMUEL KINGSLAND SHERBORN (a printer) identified the pages on which the criticism of Gildas was written as those from which the corresponding pages had been printed.

Mr. CHARLES REYNOLDS WILLIAMS (one of the Defendant's solicitors), said he could identify the pages on which the criticism of Gildas was written as having been in the MS. when it was first brought to his office. He had been told that the passage had been added since the Essay was sent in for competition in 1866, and for that reason had written the word "Interpolation" in the corresponding part of his printed book.

This closed the case for the defence.

Mr. OSBORNE MORGAN, M.P., summed up on behalf of the Defendant. He said Dr. Nicholas's criticism of Gildas, about which there had been so much discussion, was not identical with that of Mr. Pike, and that, in point of fact, every one who took the views of Mr. Pike and Dr. Nicholas must of necessity discredit Gildas. It was true that both had cited common passages from Gildas himself and from Mr. Hardy, but there was no piracy in that; and the view taken of Gildas's character was not precisely the same, for "splenetic" was not the same thing as "melancholy," and Mr. Pike had not used the words "ignorant and prejudiced monk." And this criticism of Gildas was every thing of importance which had been written since the Defendant had seen the Plaintiff's book. The sections on hair-colour and skull-form had been written, as Dr. Nicholas had sworn, before he had even heard the name of Mr. Pike. He did not know whether his learned friend Mr. Grove intended to impute the most flagrant perjury to Dr. Nicholas, but, if not, the case was fully answered. He would not, however, rely solely upon Dr. Nicholas's evidence; he would deal with the case upon its merits. He argued, like Mr. Kay, that an author might take heads of argument, arguments themselves, ideas, illustrations, and references second hand from another author. None of these things constituted piracy, but he could not see that Dr. Nicholas had done them or any of them, and the instances of verbal similarity were not sufficient to support the case, as his learned leader had already pointed out.

The VICE-CHANCELLOR here remarked, "But you have not yet explained away that passage about '*rutilatæ comæ*, not *rutilæ comæ*.'"

Mr. MORGAN said, the quotation from Livy, if not the comments on it, was to be found in Prichard, and he could not see that a mere resemblance in the wording of the comments would go far towards convicting Dr. Nicholas of piracy. And even allowing that Mr. Pike's book came out on the 31st of May and that Dr. Nicholas's was not sent in for the competition until the 2nd of July, it was impossible that so large a MS. could have been written in the time. It had been shown that the MS. had been sent after it was returned from the Eisteddfod to Professor Max Müller, and then to Dr. Rowland Williams and other gentlemen; and Dr. Rowland Williams had identified his own note made then upon the very passage concerning the "*rutilatæ comæ*." If the copying had been done at all it must have been done at some time or other, but he submitted that there was no time at which it could have been done. The evidence of copied blunders had failed; for it was not a blunder to regard the Galatians as Gauls, the Galatians having been of Gallic descent. There was no point in the alleged mistake about the Population Abstracts. The mode in which the description of Blumenbach's works had been given had been explained, and nothing was left except such similarities as would necessarily occur when two authors, writing upon the same subject, took the same view.

The identity of conclusion was easily explained by the fact that no essay would have any chance at the Eisteddfod if it took any other view than that the English were Britons.

It was nearly half-past two when Mr. GROVE rose to reply. He said the case had assumed a most disagreeable aspect. His learned friend on the other side had used the *argumentum ad perjurium*, which, if it were pushed to its extreme limits, would place the plaintiff in any suit at the mercy of an unscrupulous defendant who chose to swear that he had not committed the acts imputed to him. Unfortunately a conflict of testimony was becoming the rule rather than the exception in every trial; but, however lamentable that fact might be to the moralist, it was an indication that the word of a defendant was not under ordinary circumstances to be accepted as a sufficient answer to a specific charge supported by numerous converging trains of circumstantial evidence. In this particular case he would ask his Honour to recollect the demeanour of Dr. Nicholas in the witness-box. He was not bringing a criminal charge against Dr. Nicholas; he was simply answering his learned friend's *argumentum ad perjurium*, the argument that every word spoken by Dr. Nicholas must be considered true, because to doubt it was to make an accusation of perjury. He submitted that such an argument as this would be of no value, even if there were no conflict of testimony; but there actually was a conflict of testimony concerning the condition of the defendant's 1866 MS. when produced at the solicitor's office. The plaintiff and his solicitor had both distinctly sworn that the section entitled "Gildas examined," did not form a portion of that MS. when first produced, but had been inserted at some time between last summer and the time of the trial. The defendant and his solicitor, on the contrary, swore that no change had been made in the MS. since its first production. It was for his Honour, who had had an opportunity of comparing the demeanour of the plaintiff with that of the defendant, to judge of their respective credibility. There was, without doubt, some difficulty in discovering a reason why the MS. from which the section "Gildas examined" was printed should not have been produced at first, especially as it had been admitted that the section in question had been written after Dr. Nicholas had seen Mr. Pike's book. His (Mr. Grove's) theory, however, was that there had been a change of tactics. He thought Dr. Nicholas had not at first liked to produce the MS. written on different paper from other parts of the book, written on both sides, and showing the marks of interpolation in the paging. But, upon reflection, it might have occurred to the defendant that the absence of the pages would be most damaging, while their presence, together with a confession of the time at which they were written, would have an air of frankness which might be beneficial. For this reason, and perhaps, too, in the hope of discrediting the plaintiff, they were restored. But the fact remained that Mr. Pike had looked specially for that passage in the MS., had discovered the place in which it should have appeared, had identified that place by the side-note abruptly broken off, had made a note at the time that the passage was missing, and had been confirmed by the testimony of his solicitor who went with him to inspect the MS. In confirmation of his theory respecting the change of tactics, Mr. Grove then proceeded to comment upon the glaring contradiction between the statement made on oath by Dr. Nicholas in his answer to the bill, and his statement on oath in the witness-box concerning the addition of "Gildas examined" to his work. In

his answer he swore that the whole of the published work was, with the exception of some philological tables substantially the same as that which he sent in to the Eisteddfod in 1866. In the witness-box he admitted that the whole of the criticism of Gildas had been written long after that time, and this very criticism had formed a most important feature in his prospectus issued to attract subscribers. As regarded the credibility of the witness, said Mr. Grove, the facts spoke for themselves.

Passing for the moment from the MS. of 1866, to the MS. of 1865, Mr. Grove quietly remarked that, in a suit in which there were so many curious coincidences of a wholly fortuitous nature, it was hardly a matter for wonder that the 125 pages missing, when the summons for documents was issued, should have been discovered, without any search on the defendant's part, before the trial came on. In this case, at least, it was not denied that the pages had been missing; they were found in a box which had not been opened for years, when Dr. Nicholas was looking, not for them, but for something else! And when they were found, no notice was given to the plaintiff or his solicitors, although the defendant had made affidavit, on the first production of his MSS., that he had not, and never had had, any other documents connected with the suit in his possession. Nor was it difficult to see why these pages had been kept back. The differences which were to be traced between them and the corresponding parts of the 1863 MS., the tags at the end of sections, the side notes in different ink, were all illustrative of the curious coincidence of the wonderful box. They all fitted in exactly with the other trains of cumulative circumstantial evidence. On that point, however, he would not then detain his Honour any longer, but would recur once more to the MS. of 1866, and would call his Honour's attention to an erasure which Dr. Nicholas, when in the witness-box, had first said that he could not see, and had afterwards admitted that he might possibly have made. That erasure was in the table of contents, and his Honour would see that where the words "Mental and Moral" then stood, the word "Psychical" had stood before. The head of the P and the tail of the y had been most carefully erased with a penknife, or some such instrument, and a number of strokes had been added to increase the apparent length of the word.

The Vice-Chancellor here asked, "But even supposing that has been done, what is your point, Mr. Grove?"

MR. GROVE continued. My point, Sir, is that the use of this word "Psychical" gives a complete verbal identity in the plans of the two books, though Dr. Nicholas has attempted to conceal that identity by substituting the words "Mental and Moral" for the word "Psychical".

THE VICE-CHANCELLOR: Oh, I thought you had some point there.

MR. GROVE: Yes, sir, and a most important point, which is illustrated by another similar erasure in the body of the MS.

At this interesting juncture, the court rose for the day.

On the following morning, Saturday, May 1st, the cause was set down for hearing after the unopposed motions, and Mr. Grove resumed his reply at a quarter before twelve o'clock. His speech was such a masterpiece of clear and brilliant exposition, and it was assisted by such dramatic incidents that we shall henceforward abandon the *narratio obliqua*, and give as nearly as possible his own words.

MR. GROVE said,—Your Honour will remember that when the court rose yesterday, I was calling attention to the erasure of the word "Psychical" in

the table of contents of the MS. of 1866. My learned friend Mr. Kay at an early period in this trial interrupted me somewhat triumphantly to remark that the plans of the two books are not identical, because Mr. Pike speaks of the evidence of psychical characteristics, while Dr. Nicholas speaks of the evidence of mental and moral characteristics. Whatever force there may have been in that remark is turned against himself by this excessively careful erasure of the very word "psychical." The word has not simply had the pen run through it, as would be done by anyone correcting a MS. for the printer; but extraordinary pains have been taken, though taken in vain, to destroy with a knife, as well as a pen, all trace of the word which gives a clue to the piracy. And the very same thing has been done in the body of the MS. in the heading of the section corresponding with the table of contents. There also either the word "Psychological" or the word "psychical" (and I am confident that it is the word "psychical") has been manipulated in the same way for the purpose of concealing the fact that the word has been used. And I ought to tell your Honour that, although most of the facts have been furnished by the persons instructing me, I have myself made the discovery of this second erasure, and a most important discovery it is, as showing the defendant's *animus*.

The VICE-CHANCELLOR. As this is a new point not previously brought forward in evidence, either Mr. Kay or Mr. Morgan will have a right to reply upon it.

Mr. GROVE. Certainly; upon the second erasure alone. Here, then, we have a complete identity of plan—even to the very words which Dr. Nicholas has attempted to conceal—"the historical evidence" in the one book, "the historical argument" in the other; "the philological evidence" in one book, "the evidence of philology" in the other; "the evidence of physical characteristics" in one book, "the evidence of physical characteristics" in the other; and, finally, "the evidence of psychical characteristics" in one book, and "the evidence of psychical characteristics" in the other. After the observations made by your Honour, I need not dwell further upon the remarks of my learned friend, Mr. Kay concerning the manner in which the plans of the two books have been set out in the bill. He insisted much on the fact that no chapter or section is headed either "The Evidence of Physical Characteristics," or "The Evidence of Mental and Moral Characteristics," but, as your Honour has perceived, the chapter is headed "The Evidence of Physical, Mental, and Moral Characteristics," and of that chapter the first section treats of the "physical," the second of the "mental and moral characteristics of the English people. The words "The Evidence" have simply been brought down from the heading of the whole chapter to the headings of the sections, and the plan of Dr. Nicholas's book is quite correctly stated in our bill.

Before I pass from the identical plans to the identical passages in the two books, I have a word to say upon the manner in which Dr. Nicholas tells us that he composed his work. We have 168 different books mentioned in his list of authorities (I have not myself counted them, but I take the computation of my learned friend Mr. Kay) 168 books consulted by a gentleman who wrote most of his work while he was travelling about! Is it a matter for surprise that he could not tell us where he saw any one of the authorities about which I asked him? Where did he see Pouchet? He did not know; he could not say! It might have been at the rooms of the Anthropological

Society, but he was not, as it turned out, prepared to assert that he ever consulted a single book there in his life.

The VICE-CHANCELLOR. He was not a member of the Society at the time.

Mr. GROVE. No, sir, he was not; but I was willing to suppose that the Anthropological Society is a hospitable body, and that if a stranger wished to consult a book he might be permitted to do so. But I can give your Honour another reason why Dr. Nicholas would not state positively that he saw Pouchet in the library of the Anthropological Society. It was because we had in court an officer of that Society who would have proved that he never consulted any book whatever in that library before the appearance of his own work. I can give your Honour a reason why he would not state positively that he consulted Retzius at the British Museum; it was because we had in court an officer from the museum who would have shown that Retzius was not in the library at the time.

The VICE-CHANCELLOR. I have written to inquire about both Pouchet and Retzius, and I expect an answer shortly from Mr. Watts, the keeper of the books at the Museum.

Mr. GROVE. Then I will pass on to another point, and make a remark upon Dr. Nicholas's memory. It was extraordinary what a perfect recollection he had of every date, of every minute fact, of every locality, when my learned friend Mr. Morgan was examining him in chief. But it was still more extraordinary that he was unable to remember anything when he was cross-examined by me. Time, place, and every detail had become quite suddenly a blank to him. It is a difficult thing to deal with such a witness as that, and I confess that he tried my patience. I confess that when I thought I was pinning him down to one solitary definite statement, I made use of an expression which was not suited to this court, and asked him whether he would swear it, although he was already upon his oath.

The VICE-CHANCELLOR. You need not apologise again for that, Mr. Grove.

Mr. GROVE. It was his demeanour in the witness-box that wrung the expression from me.

The VICE-CHANCELLOR. Here is the letter from Mr. Watts. [The purport of this letter was that the French edition of Pouchet, published in 1864, and mentioned by Dr. Nicholas in his list of authorities, was not in the Museum at all (though other editions were), and that Retzius had only been added quite recently to the library of the Museum.]

Mr. GROVE. That, sir, is what we knew to be the case; but I have another word to say about Retzius. [To Dr. Nicholas's solicitor.] Give me your copy of Retzius. [A new and unsoiled copy was handed up to him.] [To Mr. Pike's solicitor.] Now let me have Mr. Pike's copy. [An old and much worn copy was handed up to him. He took the new copy in his left hand and the old copy in his right, and held them out before him.] Here, he continued, your Honour will perceive the characters of the two men. Here in my right hand are seen the marks of honest industry, of persevering research, of the midnight oil; there in my left is Dr. Nicholas's representative, bought a few weeks ago, and consulted only for the purposes of the present suit. [This burst following upon the letter from the Museum caused no small sensation in court.]

Mr. GROVE resumed: It is not only Retzius, nor even Retzius and Pouchet alone, that Dr. Nicholas has professed but omitted to consult. Your Honour has heard him confess that he would not venture to translate Gildas for

himself and took his translations from Bohn. And when he was reading his Bohn, and compiling his great list of 168 original authorities, he was travelling about the country so lightly equipped that he could not even carry the whole of his MS. of 1865 with him, but had to tear out leaves in order to lighten his luggage? Yet this MS. book is not a large one; and where were then the 168 authorities. Need I suggest to your Honour that, if he was travelling about at all, he was travelling with no works of reference but Pike and Bohn in his carpet bag?

The VICE-CHANCELLOR. That is your theory, of course.

Mr. GROVE. That is my theory, certainly, on the assumption that he was travelling in Wales, though on this point, as on many others, his memory was so defective that I cannot understand where he was during any part of his journey.

The VICE-CHANCELLOR. I could not quite understand it. There was something about his head-quarters being at Carmarthen.

Mr. GROVE. So I understood at last, though my first impression was that he started from London. But, wherever his head-quarters may have been, he was very positive in stating that this work, with all this list of authorities, was written while he was travelling, he cannot say where. It may be that this will afford some explanation of the identity of passages in the two books and I propose to go through the criticism of Gildas and the sections on hair colour and skull-form to show your Honour that there is hardly a paragraph in them which does not closely agree with something to be found in Mr. Pike's book.

Mr. GROVE, in commenting upon the various passages, said an attempt has been made to show that Dr. Nicholas's criticism differs from Mr. Pike's because the former uses the word "monk" and the latter does not. Mr. Pike, however, says Gildas exercised an ecclesiastical function, and he could hardly have done that in those days unless he had been a monk. An attempt has also been made to show that the words "*rutilatæ comæ* not *rutilæ comæ*," have been taken by both authors from Prichard. But, as your Honour has seen, Prichard, though he quotes Livy, makes no such comment, and uses the expression "*rutilatæ comæ*" for a wholly different purpose. He does not, like Mr. Pike and Dr. Nicholas, confound the degenerate Galatians of Asia with the true Gauls of Europe, but speaks of them as being what they really were, and actually treats the word "*rutilatæ*" as though it were equivalent to "*rutilæ*," by saying that the Galatians had naturally a xanthous complexion. And while on this topic I may as well point out to your Honour that Prichard's whole system and opinions are so far from being the foundation of any part of Mr. Pike's book that the two are in direct opposition. Prichard says he does not know how to account for the fact that the English have dark hair, when all their possible ancestors, Celtic and Teutonic alike, had fair hair. Mr. Pike says the English are descended from the Britons because the Britons had dark hair. Again Prichard says that resemblances and differences of skull-form and other physical characteristics afford no ground for assuming identity or difference of race, while Mr. Pike, followed by Dr. Nicholas, lays special stress on the argument from skulls and hair.

[The learned counsel here cited a number of passages from Prichard's *Physical History and Natural History of Man*.]

So much for the argument from Prichard, which was to have destroyed one of our positions. Then as to the copied blunder in the description of Blumenbach: a copy of Gliddon has been produced, in which the whole collection

is described as "Decades," but Dr. Nicholas could not tell us when or where or from what copy of Gliddon he got that description. And he has still left unexplained the fact that he introduces the letter *e* between *i* and *d* in the Christian name, which in the title-pages of Blumenbach's collection is written Frid. It is, no doubt, only another of the curious fortuitous coincidences, of which we have so many, that Mr. Pike had previously done precisely the same thing. It is curious, too, that Dr. Nicholas has nowhere mentioned Gliddon in his book; and then, again, it is curious that both Mr. Pike and Dr. Nicholas should erroneously take Middlesex and Surrey as the representatives of London, when Dr. Nicholas might have found a table giving all the particulars he wanted for London itself, without putting himself to half so much trouble. He wanted the proportion of the inhabitants of London born out of London; he says he consulted the Census Returns of 1861; yet there is the very information he wanted ready to his hand, and nothing which could induce him to follow the inaccuracy of Mr. Pike, who went to the return of 1841.

Much has been said about the impossibility of the piracy having been committed at any time when Dr. Nicholas's MS. was in his possession after the appearance of Mr. Pike's book. It is not for me to give the exact time when each particular passage was taken. There was a considerable interval between May 31st, when Mr. Pike's book was published, and the 2nd of July, when Dr. Nicholas's Essay was sent in. And the time between the holding of the Eisteddfod and the sending of the MS. to Dr. Rowland Williams we really know nothing at all about. Dr. Williams does not tell us positively when he got the MS. It might have been in September, or in October, or—

THE VICE-CHANCELLOR. He said he had been told that in Court.

MR. GROVE. He said he had been told that; and even if we admit it, nothing is proved by it. The MS. was sent to Mr. Max Müller before it was sent to Dr. Williams. Why then was not Mr. Max Müller called? It is idle to say that Dr. Nicholas had no opportunity of adding to his MS. after the Eisteddfod on such evidence as this. We have no evidence when the MS. was sent to Dr. Williams, or where it was before it was sent to him. Then we have been told, or have had it insinuated, that every one who treats on the subject must have exactly the same plan, and every one who takes a view opposed to our Teutonic origin must discredit Gildas. The simplest answer to that is that Dr. Nicholas's Essay of 1865 was not on the same plan, and did not contain a criticism of Gildas. And then my learned friend Mr. Osborne Morgan says that every essay sent in must of necessity make out the English to be descended from the ancient Britons or it would have no chance of success. Why, that is the very opposite of the truth. The Welsh, it is true, believe themselves descendants of the ancient Britons, but they believe that of themselves in contradistinction to the English, and they pride themselves upon it in opposition to the "Saxon." In fact, the common expression "*Dim Seisnig*" is the true index to their real feelings.

And now I am glad to say I have arrived at the end of a case which has been most difficult and most painful to me; but I hope your Honour will see that there is an amount of cumulative evidence brought forward which admits of only one hypothesis except that of a miracle.

MR. MORGAN, having the right of reply on the second erasure, said: My explanation of it is that the word erased is neither "Psychological" nor "Psychical" but "Physiological." The fact is my client's book shows in many places that he has a most imperfect knowledge of Greek, and I believe he did not know how to spell the word "Physiological." It seems to me that he

left out the *h*, and when he discovered his mistake he was so much ashamed of it that he tried to conceal what he had written. That I believe to be the true explanation.

Mr. GROVE said, he would not controvert his learned friend's opinion of Dr. Nicholas's attainments in Greek or English, but he believed his Honour would see that the word erased was not "physiological", but "psychical", or if not that, "psychological", and either of the two would serve his purpose.

The VICE-CHANCELLOR said, that so many important issues were involved that he should reserve his judgment until after the vacation.

Judgment in the cause was given on May 24th. The Court, as before, was crowded with literary and scientific men, and the most profound silence was maintained whilst his Honour, after stating the object of the suit, pronounced judgment as follows :

"The plaintiff says in substance, 'I wrote my book in support of a theory that the English are not, as generally supposed, mainly and substantially of Anglo-Saxon or Teutonic race; but that, on the contrary, they are plainly and substantially of the old Celtic race,—the same people which possessed this land before the invasion of the Romans. I proceeded,' he says, 'to consider the subject under the heads of—1. The Historical Evidence; 2. the Philological Evidence; 3. the Evidence of Physical Characteristics; 4. The Evidence of Psychical Characteristics.' The defendant has pursued in the third part, which occupies by far the greater portion of his book, precisely the same plan, with this difference, that he has added a chapter on English law; that he has made a separate chapter of the evidence of topographical and personal names; and that for the word 'psychical' he has used 'mental and moral.' The plaintiff says, 'that plan, which is in substance identical with mine, is copied from mine.' He further says, 'It was necessary to my argument to get rid of a good deal of what had been taught us as history of the Anglo-Saxon invasion, and I accordingly proceeded to show that the stories of Hengist and Horsa, of Vortigern and Vortimer, of the complete expulsion of the British race by the Saxon invaders, were mythical. In the investigation of that subject, I traced the whole of what has passed for history to Gildas, and I proceeded to inquire to what extent, according to the canons of modern historical criticism, reliance could be placed on the narrative of Gildas, and I came to the conclusion, on several grounds, that the narrative is wholly untrustworthy. In the defendant's book, I find that he adopts exactly the same course of argument, the early history treated as of the same legendary character. I find it traced to Gildas as the sole foundation for it. I find the authority of Gildas then tested by the same canons, and the same conclusion which I had arrived at also reproduced, and on the same, or substantially the same, grounds. It is not only the logic



which is the same, but the rhetoric shows most singular coincidences.' (His Honour here referred to passages from the works of plaintiff and defendant.) The plaintiff further says, 'I took especial pains with respect to certain physical characteristics, the colour of the hair and the form of the skull. I said that there was a popular theory starting with two assumptions :—1. That the Anglo-Saxons were a fair-haired, red-haired, or flaxen-haired people: 2. That the English are a fair-haired, red-haired or flaxen-haired people. I proceeded to demolish both these assumptions. The defendant has done the same. As to the second assumption, I proceeded to give the results of my personal examination of 4,848 heads in London; and proceeded further to show, from the population abstracts, that London might be considered a fair representative of the whole of England; that it is peopled not exclusively by Londoners, but by natives of all parts of the country. I find,' the plaintiff says, 'in the defendant's book a similar statement of identical results of personal investigation; and, what is very extraordinary, I find that though the defendant's results are given as arrived at both in London and the north of England,—6,000 in the one, and 5,000 in the other,—he, too, proceeds to show, and to show from the population abstracts, that the population of London is drawn from all parts of the island. I proceeded,' the plaintiff says, 'to ascertain what was said by ancient authors, and with what qualifications these statements were to be received as to the hair, colour, eyes, and complexion, of the ancient inhabitants of these islands, the Gauls, and the ancient Germans. The defendant has referred to the same descriptions, and made the same qualifications. For example, I pointed out that when Tacitus and other writers asserted that all the Germans had blue eyes and *rutilæ comæ*, it was to be noted that the Greeks and Romans were generally dark-haired, and may have regarded fair hair as a rare and great beauty, and may have been struck by a proportion of light hair greatly in excess of that which they found among themselves. Again, having premised that the passages in which the Gauls or Celts are described have been carefully collected by Prichard, I made a comment on the passage quoted by Prichard from Livy, that the expression was '*rutilatae comæ*', and not '*rutilæ comæ*', 'reddened,' not 'red'. Having come to the conclusion that the Gauls were in the habit of dyeing their hair of a lighter hue, I made a passing reference to the alleged custom, now prevalent in France and England, of dyeing the hair red. The defendant has made the same fashion the subject of a rhetorical paragraph.'"

His Honour, after mentioning other charges made by the plaintiff against the defendant of having adopted his results without inde-

pendent investigation, especially in reference to the argument derived from a comparison of skulls, proceeded as follows :—

“These are some, and some only, of the points to which the plaintiff’s counsel has drawn my attention. I have read both the books carefully in the parts complained of, and if the matter rested on a comparison of the two works, I could have no doubt whatever that the defendant’s work was, in these parts, a palpable crib from the plaintiff’s, transposed, altered, and added to,—to use the words of Lord Strangford’s award, ‘essentially, indeed typically, second-hand, run off easily from the pen by a well-trained writer’,—a writer, I would add, skilful in appropriating the labours of another, and in disguising, by literary artifices, the appropriation.

“But the defendant has pledged his oath to this, that his work is an independent work, written substantially before he had seen the plaintiff’s work, and that the resemblances are due to the nature of the subject,—to the object, which was common to both, of establishing for the ancient British a large share in the production of the great British nation of the present day,—to the obvious nature of the topics which such an object would suggest to any persons who had followed the course of modern historical criticism, and of ethnological and anthropological research and speculation, and the like obviousness of the authorities which such persons would refer to and quote. His answer contains the following passage :—

“I say that the MS. from which my said book was printed, with the exception of appendices A, B, and C, which I afterwards inserted at the suggestion of Professor Max Müller, and of the index, and of some additional sentences and notes, principally suggested by Professor Max Müller and Dr. Rowland Williams, is *verbatim* the same MS. as that which I submitted for competition at the Eisteddfod in 1866, some months before I had ever seen or heard of the publication of the plaintiff’s work’, etc.”

His Honour proceeded :—“The defendant has been examined and cross-examined before me at considerable length. He adheres to his statement in the answer, with one most notable exception. He now states that the whole chapter about Gildas was written, or as he calls it, re-written, after he had seen the plaintiff’s book, and after the MS. had been submitted to Professor Max Müller and Dr. Rowland Williams, and he, not an illiterate man, but an author accustomed to test the weight of historic texts, can give no further explanation of the deliberate and emphatic statement in paragraph 18 (the passage quoted from the answer) than that it is stronger than his instructions to his solicitor went. It has been pressed on me that I cannot decide against the positive oath of the defendant without convicting him of

wilful and corrupt perjury. I have had occasion more than once to say that this is not a criminal court ; that I am trying no one for any crime ; I am here bound by my own judicial oath to well and truly try the issue joined between the parties, and a true verdict give according to the evidence ; that is to say, according as I, weighing all the evidence by all the lights I can get, and as best I may, find the testimony credible or incredible, trustworthy or the reverse. The law which admitted the testimony of the parties, and of interested persons, was passed in full reliance on the judges and on the juries that they would carefully scrutinise such testimony, and would give it such weight as it deserved, and no more, or no weight at all. Is the result of the defendant's examination, or cross-examination, such as to enable me to place reliance on his story ?

"To begin with, I have read through carefully the whole of the notes marked A and B, which were the materials for his first essay, and I am satisfied that he had not, at the time he wrote them, the remotest idea of that which is now found in the parts of his book complained of. To the author of A and B the common school histories of England were genuine history. Hengist and Horsa, Vortimer, and Vortigern were historic persons ; there is no trace whatever of the sceptical criticism which will have it that the whole of that history, fit only for the nursery, is to be carried back to Gildas only, and that Gildas, if not himself a mythical or shadowy personage, is a historic witness wholly untrustworthy. Indeed, the author was so little versed in the subject, that he talks of Gildas copying Bede, and putting in darker colours. There is no trace whatever in these notes of the examination of the ancient authorities as to hair and complexion of Britons, Gauls, and Germans, and of the numbering of the colours and shades of hair of the present people of the country. There is no trace whatever in those notes of the examination of the evidence afforded by ancient skulls, and of the comparison between that evidence and the results of a careful examination of the existing types of modern heads, English and German. The plaintiff says, 'If you did not take all this from my book, tell me where you took it from. Where are the materials from which you elaborated it ?' The defendant is unable to say when or where he gathered the materials, or when or where, indeed, he wrote any part of his present essay. The collection of materials for a genuine literary work is a thing of time and labour. You cannot walk by instinct to the proper shelf of a library, take down the right book, open it at the right page, and hit on the right passage, and just the book, the page, and the passage, which somebody else has found before you. The defendant has not a single rough note to produce, no trace of his quarrying in the British Museum, or

any other like quarry, from which the stones of the literary edifice were to be built up. His Honour then referred to defendant's diary from February, 1866, up to July 2, when the prize essay was sent in, and observed,—It is certainly very singular that an author should not be able to give a single place or time when or where he consulted a high authority, and that he should not be able to produce a single original note, extract, or quotation. Then there were some special matters on which he was especially pressed :—‘ You have quoted Retzius, where did you find him ? ‘ I cannot say.’ ‘ You have quoted Georges Pouchet, *Pluralité des Races Humaines*, Paris, 8vo, 1864), where did you find him ? ‘ I cannot say.’ It is to be observed that these books are not in the British Museum. Again, he was asked about the public meetings at which it is stated in the book that 10,000 complexions had been marked for the purpose of this essay, with the detailed figures of the results obtained, ‘ Can you produce the times and places of these meetings ? ‘ He is again unable to fix time and place. I have been, therefore, obliged to arrive at the conclusion that the account which the defendant has given of his composition of his work, in the matters complained of, is not probable, is not credible, is not trustworthy ; and the result of his answer, his examination, and his cross-examination, on my mind, so far from displacing, has confirmed the conclusion produced by the internal evidence and the comparison of the two works.

“ This conclusion, however, is not sufficient to dispose of the case. Plagiarism does not necessarily amount to a legal invasion of copy-right. A man publishing a work gives it to the world, and, so far as it adds to the world's knowledge, adds to the materials which any other author has a right to use, and may even be bound not to neglect. The question, then, is between a legitimate and a piratical use of an author's work. In considering this I have not been unmindful of the small comparative extent of literary composition which is traceable from the one to the other ; I have not been unmindful that there was some not immaterial exercise of literary labour and skill in the transfusion and transposition which I have held to have been made, and I have endeavoured to guard myself against any prejudices derived from my hostile conclusions against the defendant which I have stated. I have considered it as if the defendant had openly borrowed from the plaintiff's book, and had candidly acknowledged the source. And I think there is a good deal which he might have done, so doing it. There is no monopoly in the main theory of the plaintiff, or in the theories and speculations by which he has supported it, nor even in the use of the published results of his own observations. But the plaintiff has a right to this—that no one is to be permitted, whether

with or without acknowledgment, to take a material and substantial portion of his work, of his argument, his illustrations, his authorities, for the purpose of making or improving a rival publication. That the part taken in this case is material and is substantial there is no better evidence than the defendant's own circular inviting subscriptions.

"The plaintiff, therefore, has in my judgment, made out his case, and he is entitled to an injunction to restrain the publication of the book in its present state, or of any book containing the 7th section of chapter 1, part III, or section 1 of chapter 5, of part III, and an order for the cancellation of those parts. He is entitled to his costs of the suit, and to an account and payment of his damages. I stated at the outset that my view of the damages in cases of literary piracy is that the defendant is to account for every copy of his book sold as if it had been a copy of the plaintiff's, and to pay the plaintiff the profit which he would have received from the sale of so many additional copies, and I adhere to that mode of assessment."

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### MUSIC IN RACE.\*

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IF there is anything to cheer the student of anthropology it is the daily growing influence his science exerts on other and often on very distant fields of inquiry as soon as that inquiry begins to assume a really scientific character. Of the many instances thereof which have lately come under our notice one is too significant to be entirely omitted from this *Review*, although we are unable, from want of space, to give of it so full an account as it in some respects deserves.

Whilst the Anthropological Society of London has been discussing about the connection between race and religion, a very fierce dispute was carried on amongst the musicians and critics of Germany about the Jewish element in modern music. Of course, the subject is eminently one which falls to the domain of anthropology, and nobody but a student of the science of man will be entitled to speak with

\*<sup>1</sup> *Das Judenthum in der Music*. Von Richard Wagner. Leipzig: den J. J. Weber, 1869.

<sup>2</sup> Wilhelm Lübke und Eduard Hanslick über Richard Wagner. Berlin: Louis Gerschel, 1869.

<sup>3</sup> *Offnes billet-doux, etc.*, an Herrn Richard Wagner. Von E. M. Oettinger. Dresden: L. Wolf, 1869.

<sup>4</sup> *Das Judenthum und Richard Wagner*. Berlin: W. Adolf and Co., 1869.

<sup>5</sup> *Histoire du Lied ou la Chanson Populaire en Allemagne*, par Edouard Schuré. Paris: Librairie Internationale, 1868.